

DOUBLE TAXATION

*Exchange of notes at Washington May 6 and 31, 1946, modifying and
supplementing convention of July 25, 1939
Entered into force May 31, 1946
Terminated by convention of October 18, 1946¹*

Department of State files

The French Ambassador to the Secretary of State

[TRANSLATION]

EMBASSY OF FRANCE
IN THE UNITED STATES
AF/539.

WASHINGTON, May 6, 1946

MR. SECRETARY:

Upon the request of the Government of the United States of America, conversations were held in Paris between the 10th and the 18th of October 1945, between an American Delegation and Representatives of the Ministry of Foreign Affairs and the Ministry of Finance, with a view to modifying and supplementing certain provisions in the Convention of July 25, 1939² concerning income taxes, and to laying the bases of a new convention for the avoidance of double taxation in the matter of inheritance taxes and for the prevention of fiscal fraud.

In the course of these conversations the question of determining the field of application of the national solidarity tax on nationals of the United States was also examined.

These questions have been the subject, recently, at Washington of new exchanges of views between a French Delegation and an American Delegation.

I am happy to state that, as Your Excellency knows, the two delegations have agreed upon a new draft convention for the avoidance of double taxation as regards inheritance taxes, for the modification and supplementing of certain provisions of the Convention of July 25, 1939 and for the prevention of fiscal fraud.

Pending signature and ratification of the said Convention by our two Governments, I have the honor to inform Your Excellency at once, with a view to its immediate application, of the agreement of the French Government upon the following points:

¹ TIAS 1982, *post*, p. 1178.

² TS 988, *ante*, p. 1046.

1) Article 7 of the Convention of July 25, 1939 provides especially that royalties paid in France to a natural or fictitious American person shall be exempt from taxation in France, provided such natural or fictitious person does not have a permanent establishment there.

It is understood that these provisions shall be applicable in the case of royalties paid to American film producers for the showing of the latter in France, on condition that the income from the showing of such films shall not be considered as going to a permanent establishment owned in France by the American producing company.

2) According to Article 9 of the Convention of July 25, 1935, income from labor, with the exception of that referred to in Article 8 shall be taxable only in the State in which the taxpayer carries on his personal activity.

It is of course understood that Article 9 shall apply only in the case where a taxpayer is in a position to be taxed by each of the Contracting States.

This interpretation is, in fact, in conformity with the principle established by Article VI of the Protocol annexed to the Convention of 1939, according to which the clauses of the Agreement must not result in making worse the fiscal situation of the taxpayers.

3) The American Delegation called the attention of the French Delegation to the case of American business men sent to France by the American companies to which they belong, to carry on an activity paid for by those companies.

It was taken into consideration that American business men who establish themselves in France, receive, because of such establishments, a larger salary than that which they would receive if they had remained in the United States. This larger salary is justified by the greater expenses (maintenance of their establishment in the United States, education of their children, etc., . . .) borne by them. It was therefore agreed that the *Direction Générale des Contributions Directes* [Administration of Direct Taxation] should proceed with an open mind, upon the request of the persons concerned to the examination of each individual case for the purpose of determining, should the occasion arise, before the establishment of American corporations in France, what would be the exact situation of their personnel with regard to the schedular tax on salaries and wages (with respect, especially, to the amount of professional expenses the deduction of which could be authorized for the calculation of the tax).

On the other hand, the members of the French Delegation reserved the possibility for the French Fiscal Administration to call to the attention of the competent American authorities the case of the Frenchmen who might consider themselves excessively taxed in the United States.

4) The American Delegation requested that derogations from French legislation on foreign exchange be granted in favor of the American nationals

referred to above, who might not wish to have income received outside of France transferred to France.

In fact, French legislation on foreign exchange requires foreign nationals domiciled in France to repatriate income received outside of French territory.

The American delegation was informed that no general decision on principle could be made, but that each individual case would be examined in as liberal a spirit as possible, the length of the stay in France of the persons concerned being taken into consideration.

5) With respect to Article 14 B. a) of the Convention of July 25, 1939, it was agreed to raise to 25% the contractual deduction of 12% applicable to the rates of the French tax on income from securities, in order to make subject to such tax, in France, income from securities, debts and trusts of American origin, under the conditions fixed by French legislation, without the necessity of taking into account the nationality of the beneficiary of the said income.

6) The American Delegation called the attention of the French Delegation to the case of an American woman, married to a Frenchman, who has retained her American nationality. Under French legislation, the income of American origin that she receives, is merged with that of her husband, to be taxed in the name of the latter. The fact that this income may have been subject to the American tax did not permit an exception to be made thereof, as provided for by Article 114 of the *Code Générale Français des Impôts Directes* [General French Code of Direct Taxes], since it authorizes only taxpayers of foreign nationality taxable in France, to exclude from their taxable income, income of foreign origin, whereby they prove that they have been subject to a personal tax on gross income in their country of origin.

It was recognized that the solution of the difficulty referred to should be sought within the limits of Article 25 of the Convention of 1939, and it would be incumbent upon the *Administration des Contributions Directes* to take all pertinent measures to avoid the criticised double taxation.

7) The France-American Convention of April 27, 1932,^a provides that American corporations that have permanent establishments in France and are subject there to the tax on income from securities, may elect to be taxed only upon $\frac{3}{4}$ of the profits that they receive from those establishments. In the same way, an American corporation had the right, within six months from the putting into force of the Convention (Article 6), to exemption from payment of the income tax owed by it by reason of participation in the management or the capital of a French company, with the reservation that the indirect advantages that it would receive therefrom be included in the profits accruing from the latter company and subject to the tax on income from securities. This option, which had to be exercised jointly with the French company, had to be exercised within six months from the putting into force

^a TS 885, *ante*, p. 977.

of the Agreement or within six months from the acquisition of a participation in a French company.

Article 17 of the Convention of July 25, 1939 had granted to the aforesaid corporations a new time-limit of six months for exercising the option contemplated by the provisions in question.

The American Delegation pointed out that, because of the events of the war, it had not been possible to take advantage of the new time-limit in many cases.

Under these conditions, it seemed to the French Delegation both logical and equitable to grant to the American companies a supplementary time-limit which will run from the date of the present letter to the date of the putting into force of the new Convention regulating this matter.

8) Article 4 of the *Ordonnance* [Executive Order] of August 15, 1945, without distinction, makes the application of the national solidarity tax dependent upon the possession in France of a domicile or of an "habitual residence".

The American Delegation expressed the desire to know what was to be understood by the words "habitual residence".

It is specified that the words "habitual residence" shall be interpreted by the French Fiscal Administration as corresponding to a *de facto* domicile.

9) With respect to the basis of the national solidarity tax, established by the *Ordonnance* of August 15th, it was specified that:

a) Sums brought to France by American nationals, after the liberation of French territory, shall be liable to the tax on wealth, after application of the reduction provided for by the *Ordonnance*, without distinction as to whether they have been brought in by natural or by fictitious persons, exception being made, nevertheless, for fictitious persons exempt from the tax;

b) With respect to the tax on enrichment, such sums could not be subject thereto, except when in the possession of natural persons, fictitious persons being exempt therefrom. But it was recognized that the application of the tax on enrichment to such sums would not correspond to the spirit of the *Ordonnance* of August 15, 1945, and that there would be no reason for requiring it.

10) American holdings blocked in France during the war could not be exempt from the tax on capital provided for by the *Ordonnance* of August 15, 1945. However, a distinction should be made between the tax on enrichment and the tax on wealth.

The French Delegation agreed that, when the blocking, in France, of holdings belonging to citizens of the United States not residing in France was effected at the instigation of the French or German authorities, the French Administration shall not take advantage of the measure which prevented the transfer of such holdings to the United States, in order possi-

bly to attribute to it the character of an enrichment. Accordingly, such sums shall be exempt from the tax on enrichment and shall be subject only to the tax on wealth.

It is understood, as was indicated in No. 9 above, that fictitious persons shall not be liable to the tax on enrichment.

11) With respect to "French Republic" loan securities, sometimes called "Morgan Bonds", expressed in dollars and exempt from all present or future taxes, it was specified that these bonds, as, also, all loan securities furnished with the same fiscal advantages, in the hands of American nationals (natural or fictitious persons) whether or not they are domiciled in France, shall be exempt from the national solidarity tax.

I have the honor to inform Your Excellency that my Government will consider this letter and the reply that you will be good enough to address to me as constituting the agreement of our two Governments concerning the putting into application of the principles set forth above.

I avail myself of this opportunity to renew to Your Excellency the assurances of my very high consideration.

H. BONNET

His Excellency

JAMES F. BYRNES

*Secretary of State of
the United States
Washington, D.C.*

The Acting Secretary of State to the French Ambassador

DEPARTMENT OF STATE

WASHINGTON

May 31, 1946

EXCELLENCY:

I have the honor to acknowledge your note of May 6, 1946, in which you refer to conversations which have taken place in Paris and Washington between officials of the Government of the United States of America and officials of the French Government, and to the draft of a new convention for the avoidance of double taxation with respect to estate and inheritance taxes, for the purpose of modifying and supplementing certain provisions of the Convention of July 25, 1939 relating to income taxation, and for the prevention of fiscal evasion in respect of such taxation.

With a view to immediate application, you have been kind enough to communicate through me to my Government a confirmation of the position of the French Government with respect to the treatment to be accorded

American nationals by the French Government in regard to certain matters, including the interpretation and application of certain provisions of the Convention of July 25, 1939 and the scope of application to American nationals of the French National Solidarity Tax established by the Ordinance of August 15, 1945.

On behalf of the Government of the United States of America, I have the honor to express appreciation for the confirmation, given in Your Excellency's note, with respect to the position of the French Government as outlined therein.

Accept, Excellency, the renewed assurances of my highest consideration.

DEAN ACHESON

His Excellency

HENRI BONNET,

Ambassador of the French Republic.